

S.3: An act relating to Mental Health Professional's Duty to Protect Third Persons

Senate Judiciary; 1.27.2017

Committee Decision Points

I. Duty Extends to Whom?

- (Reasonably) identifiable victim(s)
- Caregivers within “zone of danger”
- Members of the public

II. If duty extends to “identifiable victim” who is included?

- Named person(s)
- Person(s) described and easily capable of being identified
- Person(s) at risk due to proximity and/or characteristic

III. When does a duty arise?

- Type of danger posed?
 - Peck text: “serious risk of danger” (does this include property damage?)
 - Peck footnote: property damage only to extent it represents “lethal threat to human beings”
 - HIPAA: “serious and imminent threat to the health or safety”
- What is “imminent”?
 - Add definition?
- Client capacity for carrying out threat?
 - Statute remains silent; or
 - Specify that client must have ability to carry out threat

IV. How is duty discharged?

- Statute remains silent?
- Warn potential victim?
- Warn law enforcement?
- Provide information to caregivers?

V. Drafting Options

- Affirmative duty
- Immunity approach